WEST VIRGINIA CODE: §31A-4-26

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, may not exceed 15 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to 10 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term “loans and extensions of credit” includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of Financial Institutions; the terms also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment;

(B) The term “person” includes an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(C) The term “unimpaired capital and unimpaired surplus” means the amount of tier 1 (core) capital, as defined in federal regulations, that is outstanding as indicated in the bank’s most recent quarterly report of condition and income as filed with the Commissioner of Financial Institutions pursuant to §31A-4-19 of this code, plus the amount of the allowance for loan losses; and

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(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection are subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus;

(B) The purchase of bankers' acceptances of the kind described in Section 13 of the Federal Reserve Act and issued by other banks are not subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of 10 months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples are subject to a limitation of 20 percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the State of West Virginia or by other such obligations fully guaranteed as to principal and interest by the State of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved

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by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to 25 percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(I)(i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 percent of the face amount of the note covered shall be subject under this section to a maximum limitation equal to 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, are subject under this section to a limitation of 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within 30 business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(J) Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than $1 million or when approved in writing by the Commissioner of Financial Institutions, are not subject to any limitation based on capital

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and surplus.

(5) (A) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The Commissioner of Financial Institutions may also prescribe rules to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this article, but which will be in violation of this section upon the effective date of this article; and

(C) The Commissioner of Financial Institutions may also determine when a loan putatively made to a person is, for purposes of this subsection, attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained authorizes the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: *Provided,* That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) The total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account may not exceed that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term “investment securities” means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. “Derivative security” means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term “derivative” refers inter alia to financial contracts such as collateralized mortgage obligations, forwards, futures, forward rate agreements, swaps, options and caps/floors/collars whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(B) The term “person” includes any individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; and

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(C) The term "unimpaired capital and unimpaired surplus" has the same meaning as set forth in subsection (a) of this section.

(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. The investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: *Provided,* That: (i) The purchase of investment securities under this subdivision may be made only when in the bank's prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of Financial Institutions may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(5) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities may not be held a speculative purpose.

(6) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) If there is a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than 20 percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than 30 percent in any 12 month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the Commissioner of Financial Institutions those loans, extensions and investments that exceed the limitations of this section using the bank's current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current reevaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the Commissioner of Financial Institutions retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of

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credit and investments be brought into conformance with the reevaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

(e) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he or she is connected more than $25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount of $500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. The approval shall be by resolution adopted by a majority vote of the board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to the corporation or partnership constitutes a loan to the director or officer.

(3) For purposes of this subsection, an "executive officer" means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(4) Prior approval under subdivision (1) of this subsection is not required for:

(A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing extension of credit plan that has been approved by the board of directors or an appropriate committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank; or

(B) Payments of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: *Provided,* That: (i) The account is not overdrawn for more than five consecutive

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business days; and (ii) the bank charges the director or executive officer the same fee charged to any other customer of the bank in similar circumstances.

(f) An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or state-chartered credit union. An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Financial Institutions may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: *Provided,* That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to §31A-4-19 of this code in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.

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